

**MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**



**OPERATING ENGINEERS LOCAL UNION NO. 3
AND
CITY OF FREMONT**



**TERM OF AGREEMENT
JULY 1, 2009 – JUNE 30, 2011**

February 23, 2010

CITY OF FREMONT
MEMORANDUM OF UNDERSTANDING
OE3
2009-2011

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**MEMORANDUM OF UNDERSTANDING
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WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT
OF AND BETWEEN
CITY OF FREMONT AND
OPERATING ENGINEERS, LOCAL UNION #3 (OE3)**

ARTICLE 1 - ADMINISTRATION

SECTION 1: PARTIES TO UNDERSTANDING

This Memorandum of Understanding (hereinafter MOU) is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as the CITY), and the OPERATING ENGINEERS, LOCAL UNION #3 (hereinafter referred to as the Union), pursuant to Government Code 3500, et seq. This MOU applies to those classifications set forth in Appendix "A" attached hereto and made a part hereof.

SECTION 2: STATE LAW COMPLIANCE

This MOU complies with the provisions of Section 3500 et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

SECTION 3: CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this MOU is of no force or effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

SECTION 4: CONTINUATION OF EXISTING BENEFITS

Except as provided herein, this MOU does not modify existing benefits established by resolution or ordinance or other compensation benefits. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

SECTION 5: APPLICABILITY OF PROVISIONS

The following sections of the MOU are not applicable to persons employed in a temporary employment status in classifications represented by the Union:

Article 2, Section 2	Acting Pay
Article 2, Section 5	Anniversary Pay
Article 2, Section 7	Safety Shoe Allowance

Article 2, Section 8	Tool Allowance
Article 2, Section 9	Glove Allowance
Article 3	Leaves
Article 4, Section 3	Medical Insurance for Retired Employees
Article 7	Grievances
Article 8	Appeals on Discipline
Article 10, Section 3	Employee Evaluation Appeals
Article 10, Section 8	Probationary Period

SECTION 6: RECOGNITION

The City recognizes the Operating Engineers, Local Union No. 3, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time, temporary, and modified/part-time schedule employees in the classified service in the classifications of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the Municipal Employee Relations Officer.

SECTION 7: NO DISCRIMINATION

Neither the City nor the Union shall discriminate in any aspect of employment or membership based on political affiliation, race, religion, creed, color, national origin, ancestry, sex, marital status, age, sexual orientation, medical condition, or physical or mental disability.

SECTION 8: TOTAL AGREEMENT

- A. This MOU sets forth the full and entire understanding of the parties regarding matters set forth herein. All prior Memoranda of Understanding are hereby superseded or terminated in their entirety.
- B. All ordinances, resolutions, administrative regulations, departmental rules and regulations, personnel policies and procedures and management rights not specifically addressed within this MOU shall remain in full force and effect.
- C. No verbal statement or other amendments, except an amendment mutually agreed upon between the parties and in writing annexed hereto designated as an amendment to this MOU, shall supersede or vary the provisions herein.
- D. Except as specifically provided herein, it is agreed and understood that each party hereto waives its right, and agrees that the other shall not be required, to negotiate with respect to any subject or matter covered herein or with respect to any other matters within the scope of negotiations, during the term of this MOU.
- E. The waiver of any breach, term or condition of this MOU by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

SECTION 9: VALIDITY OF MEMORANDUM

Should any article, section, or portion thereof of this MOU be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the court shall only apply to the specific article, section, or portion thereof directly specified in the decision, and the remainder of this MOU shall not be affected thereby.

SECTION 10: CITY RIGHTS

The City reserves, retains and is vested with any management rights not expressly granted to the Union by this Agreement, the Personnel Rules or the Employer-Employee Relations Resolution. These City rights include but are not limited to the right to:

- A. Determine and modify the organization of City government and its constituent work units.
- B. Determine the nature, standard, levels and mode of delivery of City services.
- C. Determine the methods, means, number and kind of personnel by which services are provided.
- D. Impose discipline subject to applicable law and the provisions of this MOU.
- E. Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons subject to the Personnel Rules and Regulations.

Nothing in this Section shall relieve the City of its obligation to meet and confer on the impact of the exercise of rights enumerated in this Section.

ARTICLE 2 - SALARIES AND OTHER COMPENSATION**SECTION 1: SALARIES**

An employee who is working on a modified/part-time work schedule shall have salary pro-rated on the basis of the employee's schedule.

If any employee group receives a salary increase (inclusive of any new provision for lump sum payments or bonuses) during the term of this Memorandum of Understanding, the same wage increase will be granted to this employee group.

SECTION 2: ACTING PAY

- A. An employee specifically assigned by the Department Head or designated representative to perform the full range of duties of a higher classification on a temporary basis and who, pursuant to such assignment, does perform the day-to-day

duties and responsibilities of such position for five (5) cumulative days or more in any fiscal year shall be paid the salary of the higher classification for the time worked in the higher classification, retroactive to the first day of such service. In the pay period after the five (5) cumulative days are reached, Acting Pay will be paid. At the end of the fiscal year, all approved Acting time not previously compensated shall be paid at the Acting Rate as provided in paragraph B below.

- B. Acting Pay shall be paid at either the first step of the classification acted into, or 5%, whichever is greater.
- C. Assignment of employees to serve in an acting capacity, as defined above, shall be based upon methods determined by the Department Head. Probationary employees shall not be assigned to work in a higher classification and are ineligible to receive acting pay.
- D. Park Maintenance Worker I(s) assigned to operate a multi-gang mower or assigned irrigation responsibilities shall be paid a five percent (5%) differential under the following conditions:
 - 1. The 5% differential will only be paid for such assignment when the employee(s) is assigned to operate the multi-gang mower or is assigned irrigation duties;
 - 2. The 5% differential does not apply to training activities of the irrigation crew;
 - 3. The assigned Park Maintenance Worker I(s) will receive the 5% differential for those days the Park Maintenance Worker I is assigned to, and does operate the multi-gang mower or is assigned irrigation duties, provided that assignment is for five or more consecutive days.
- E. Building Maintenance Worker II(s) whose duties specifically assigned by the department consist of 80 percent or more of either HVAC or Electrician duties shall be paid, in addition to base pay, a five-percent (5%) differential under the following conditions:
 - 1. The 5% differential will only be paid for such assignments when the employee(s) is assigned to perform the full range of duties described under the "HVAC" or "Electrical" section of the Building Maintenance Worker II classification specification.
 - 2. The 5% differential does not apply to activities an employee is engaged in while receiving training.
 - 3. The assigned Building Maintenance Worker II(s) will receive the 5% differential only for those specified days that they are assigned to and actually do perform HVAC or electrical duties, provided that assignment is for five or more consecutive workdays.
 - 4. An employee is not eligible to receive more than one differential at a time.

Building Maintenance Worker II(s) specifically assigned by the department to perform Control System duties shall be paid, in addition to base pay, a ten percent (10%) differential under the following conditions:

1. The 10% differential will only be paid for such assignments when the employee(s) is assigned to perform the full range of duties described under the "Control Systems" section of the Building Maintenance Worker II classification specification.
 2. The 10% differential does not apply to activities an employee is engaged in while receiving training.
 3. The assigned Building Maintenance Worker II(s) will receive the 10% differential only for those specified days that they are assigned to and actually do perform control System duties, provided that assignment is for five or more consecutive workdays.
 4. An employee receiving the Control System differential is not eligible for the 5% differential under HVAC or electrical duties even though he/she may be required to perform those duties.
- F. Prerequisites for being considered for an acting assignment include an overall satisfactory performance evaluation and no discipline for one year preceding consideration.
- G. Any dispute arising out of the provisions of this Section must be brought to the attention of the Department Head or designated representative before the end of the next regularly scheduled workday.

SECTION 3: ASPHALT GRINDER/PAVER PAY

No more than two (2) Street Maintenance Worker II(s) assigned to operate and maintain either the asphalt grinder and/or the asphalt paver shall be paid a five percent (5%) differential during the course of the paving season (effective the first pay period in May and ending the last pay period in October). The 5% differential does not apply to activities an employee is engaged in while receiving training.

SECTION 4: CALL BACK

- A. An employee who has departed from the employee's work location and is called back to work between the end of his/her regular shift and 11:59 p.m. shall be entitled to a minimum of two (2) hours work or, if not provided, a minimum of two (2) hours pay at one and one-half (1-1/2) times the employee's straight time hourly rate.
- B. This minimum entitlement does not apply to employees who are called back to work within two (2) hours of their regular starting time.

- C. An employee called back to work after 12:00 a.m. will receive a minimum of three (3) hours pay at time and one-half the employee's straight time hourly rate.
- D. An employee called back to work between the hours of 12:01 a.m. and 11:59 p.m. during a regularly scheduled day off shall be entitled to a minimum of four (4) hours work or, if not provided, a minimum of four (4) hours pay at time and one-half the employee's straight time hourly rate. Employees called back to work within the time period compensated for under an earlier call back, will not receive a second callback minimum payment. Such employees will receive additional call back pay if the time required for the additional call back extends beyond the hours initially compensated for.
- E. The maximum hours an employee will be scheduled to work in a non-emergency event will not exceed sixteen (16) consecutive hours unless called out between 10:00 p.m. and 4:00 a.m., in which event the maximum hours worked shall be twelve (12).

SECTION 5: ANNIVERSARY PAY

The City and the Union recognize the benefit of encouraging employees to remain with the City. To this end, the City will award those employees who, during the term of this MOU, complete or have already completed nineteen (19) years of chronological service with a one-time five hundred dollar (\$500) bonus. Modified/part-time schedule employees will receive a pro-rated bonus calculated as a ratio of their full-time equivalent service.

The above amount is a gross amount and is subject to reduction based on the City's obligation to pay increased PERS contributions for employees receiving payments. Amounts distributed to employees shall be subject to individual deductions for Federal and State taxes and any other income-related deductions.

Payment shall be made in the pay period in which the employee's date of hire falls.

SECTION 6: OVERTIME COMPENSATION

A. DEFINITION OF THE WORK WEEK

The parties agree to comply with the FLSA definition of a workweek.

B. PAYMENT OF OVERTIME - GENERAL RULE FOR EMPLOYEES WORKING FORTY HOURS IN FIVE DAYS

Overtime work shall be defined as any time worked beyond the regular workday or beyond the regular workweek.

Except as otherwise provided by the other paragraphs of this Section listed below:

1. All hours worked in excess of the employee's regular workday shall be compensated at the rate of one and one-half times the employee's straight time hourly rate of pay.

2. All hours worked in excess of forty (40) hours per week shall be compensated at the rate of one and one-half times the employee's straight time hourly rate of pay.
 3. An employee working sixteen (16) or more consecutive hours shall have a minimum break of eight (8) hours before reporting back to work. If the 8-hour break goes into the employee's next regular shift, the employee shall be paid for the hours not worked in the next regular shift.
- C. All hours worked on observed holidays shall be compensated at the rate of time and one-half the employee's straight time hourly rate, in addition to straight time holiday pay for eight (8) hours. Employees on a modified/part-time schedule shall be paid on a pro-rata basis.
- D. In situations where the employee's regular work schedule provides for hours of work other than eight (8) hours per day and/or forty (40) hours per week, overtime at the rate of time and one-half the employee's straight time hourly rate shall be paid for all work in excess of the regular daily or weekly work schedule.
- E. No employee shall have his/her workday schedule changed in order to avoid meeting overtime pay requirements, except by mutual consent.

F. EMERGENCY OVERTIME

1. For purposes of this section, emergency is defined as a "declared emergency" or a situation where the City Manager has directed all employees to work.
2. After the initial response to an emergency, the standard disaster work shift will be twelve (12) hours, if possible, and in no event will an employee be scheduled to work more than sixteen (16) consecutive hours.
3. Employees will be paid at time and one-half the employee's straight time hourly rate for all hours worked which exceed their regular work shift.
4. In disaster situations the City shall:
 - a) Provide meals to employees scheduled to work twelve (12) or more hours;
 - b) Provide accommodations if the employee lives 30 or more miles away;
 - c) Provide critical incident debriefing in the event of response to serious injury or accident or rescue involving trauma or death.
5. Work schedules, whenever possible, will provide for the following:

<u>Work Shift</u>	<u>Break Before Return to Work</u>
12-hour emergency shift	8-hour break
16-hour emergency shift	8-hour break and next shift not to exceed 12 hours
12+ hours and end of disaster	Minimum 8-hour break before return to regular schedule

G. COMPENSATORY TIME OFF

Employees in the classifications of employment represented by this bargaining unit shall be eligible to establish an overtime hours worked account (Compensatory Time Bank).

1. The Compensatory Time Bank cap shall be 240 hours (160 hours worked) per employee at any given time. Overtime hours worked which would result in a compensatory time bank in excess of 240 at any given time shall be automatically cashed out.
2. Employees will be required to irrevocably elect, within the pay period the overtime is worked, whether they wish to receive cash for the overtime worked or to accrue the value of the overtime in a Compensatory Time Off Bank. If employees fail to identify how they wish the time reimbursed, it will automatically be cashed out.
3. Employees will not be able to cash out Compensatory Time Off Banks. Once accrued overtime is banked as Compensatory Time Off, the employee may only access the Compensatory Time Off Bank by taking time off.
4. Compensatory Time Off Banks will be liquidated (cashed out) at separation.

SECTION 7: SAFETY SHOE ALLOWANCE

- A. Effective the pay period that includes July 1, 2005 and the pay period that includes 7/1 thereafter for the term of this agreement, the City shall advance each classified employee working in one of the following sections the sum of One Hundred Seventy-five Dollars (\$175.00) for purchasing and regularly wearing steel-toed safety shoes/boots:

Auto Shop	Parks
Public Buildings	Construction Inspection
Recreation	Survey
Streets	

- B. An employee who is required to wear steel-toed safety shoes/boots for safety reasons must wear them while working and shall be subject to disciplinary action if not worn. All steel-toed safety shoes/boots must conform to minimum safety, maintenance and appearance standards established by the City unless OSHA standards supersede. An employee may choose not to wear, and therefore not to be paid for, safety shoes/boots unless the City requires their wear and use for safety reasons.

The City shall determine when repair or replacement is necessary. The employee is responsible for maintaining the serviceability of the safety shoe/boot.

- C. New employees shall, within two pay periods after their appointment, receive a pro-rata share of the above allowance in the amount of \$14.58 per month (for employees

covered under section A above), for the number of full calendar months falling between the date of appointment and the following July 1st.

- D. An employee who leaves City employment, who by assignment changes to a status of non-entitlement, who is absent from work for reasons other than authorized general leave, holiday or compensatory time off, or who is otherwise no longer covered by this MOU for all of the regularly scheduled work hours in a calendar month, shall not be eligible for nor receive the pro-rata allowance for each month in which such absences occur. Any adjustments in such compensation, either from the City or from the Employee, required due to cessation of eligibility shall be completed prior to the last date of coverage under this MOU.

SECTION 8: TOOL ALLOWANCE

Effective the pay period that includes July 1, 2003 and each July 1 thereafter for the term of this agreement, the City will advance employees in the classifications of Lead Equipment Mechanic, Park Equipment Mechanic, Automotive Equipment Mechanic, Heavy Equipment Mechanic and Mechanic Assistant the sum of Five Hundred Dollars (\$500.00) per year for the supply of mechanics tools.

The Union and management have agreed that the Union will have input into what kind of work and to whom work from the Auto Shop will be contracted out.

SECTION 9: GLOVE ALLOWANCE

- A. Effective the pay period that includes July 1, 2003 and each July 1 thereafter for the term of this agreement, the City shall advance each classified employee working in one of the following sections the sum of Fifty Dollars (\$50.00) per fiscal year for purchasing and regularly wearing work gloves, other than those required for safety purposes and provided by the City:

Auto Shop	Parks
Public Buildings	Construction Inspection
Streets	Survey
Recreation	

- B. New employees shall, as soon as practicable, receive a pro-rata share of the above allowance in the amount \$4.17 per month for the number of full calendar months falling between the date of appointment and the following July 1st.
- C. An employee who leaves City employment, who by assignment changes to a status of non-entitlement, who is absent from work for reasons other than authorized general leave, holiday or compensatory time off, or who is otherwise no longer covered by this MOU for all of the regularly scheduled work hours in a calendar month, shall not be eligible for nor receive the pro-rata allowance for each month in which such absences occur. Any adjustments in such compensation, either from the City or from the

Employee, required due to cessation of eligibility shall be completed prior to the last date of coverage under this MOU.

D. The City shall continue to furnish rubberized gloves for handling hazardous materials.

SECTION 10: UNIFORMS

Laundered uniforms will be provided to employees in classifications designated by the City. All employees receiving uniforms provided by the City shall be required to wear the City-provided uniforms while on duty. Exceptions to the mandatory wearing of City-provided uniforms can be made, in special circumstances, by the Division Head.

ARTICLE 3 - LEAVES

SECTION 1: GENERAL LEAVE

This General Leave Plan replaces all General Leave Plans in effect prior to January 1, 1994. Effective January 1, 1994, the City will establish a New General Leave Program to be administered as follows:

A. DEFINITIONS

For the purposes of this Section, the following terms have the meanings stated below:

1. Old General Leave Bank shall mean all General Leave accrued by the individual employee in this bargaining unit on or before December 31, 1993.
2. New General Leave Bank shall mean all General Leave accrued by the individual employee in this bargaining unit on and after January 1, 1994.
3. Aggregate General Leave shall mean the total number of accrued Old General Leave hours plus New General Leave hours.
4. Benefit Load shall mean the premium, based on an additional cash factor relating to the cost of benefits, which may be liquidated on Old General Leave accrued prior to December 31, 1993, upon separation of employment with the cash value of base salary. The Benefit Load of this bargaining unit is 38.862% of base salary.
5. Sick Leave Bank shall mean leave with pay hours available to employees which may be used for personal illness or illness involving a member of the employee's immediate family requiring the care and/or involvement of the employee.

B. ACCUMULATION AND USE

1. The use of General Leave (established in lieu of vacation leave, sick leave, emergency leave, supplemental leave, and personal leave) was and continues to be for any leave purpose, subject to the current Personnel Rules dealing with leaves.
2. There are two categories of General Leave:
 - a) Scheduled Leave: Any leave that can be reasonably forecast or anticipated, i.e., vacation leave, scheduled medical/dental appointments, "extended weekends", personal leave, etc., shall require prior approval of the employee's supervisor.
 - b) Unscheduled Leave: Any leave that is genuinely of an unanticipated nature, i.e., "sick leave", bereavement leave, etc. Inappropriate or excessive use of unscheduled leave may be grounds for corrective action in accordance with current practice.
 - c) An employee must use all accrued General Leave and compensatory time before a request for leave of absence will be granted, except upon approval of the City Manager.
3. Leave shall be accrued as follows:

Years of Service	Accruable General Leave Hours		Floating Holiday (non-accruable)	Max Limit on Accruable Leave Hours	Max Limit on Sick Leave Hours Rolled Over
	Per Year	Per Pay Period			
Date of hire through 5 years of service	192	7.3846	8	288	350
5 years + 1 day through 10 years of service	216	8.3077	8	324	350
10 years + 1 day through 15 years of service	240	9.2308	8	360	350
15 years + 1 day or more of service	264	10.1538	8	396	350

C. MAXIMUM GENERAL LEAVE ACCRUAL LIMIT BEGINNING JANUARY 1, 1994

1. Effective January 1, 1994, employees shall be entitled to accrue a New General Leave maximum accrual limit of one and one half times (1.5) the individual employee's annual General Leave accrual rate based on time in service.

No hours of New General Leave will accrue above the maximum entitlement except as noted in Section D below.

2. General Leave accrued on or before December 31, 1993 will be maintained in a separate "Old General Leave" bank. Old General Leave cannot be replenished once used.

Effective January 1, 1994, the Old General Leave accrual balance which is above the maximum accrual limit described above will not be liquidated for cash during employment. This Old General Leave Bank is available for use as General Leave and will be recorded separately from New General Leave.

3. Aggregate General Leave is the combined number of hours in the Old General Leave Bank and the New General Leave Bank.
4. The City will draw down General Leave accruals based on the "Last In First Out" method.

D. SICK LEAVE BANK OF HOURS

New General Leave hours which accrue above the maximum accrual limit described in paragraph C(1) above shall be placed in a Sick Leave Bank of Hours with a maximum accrual limit of 350 hours plus any "Old" sick leave hours accrued prior to January 1, 1994.

Accrued time in the sick leave bank shall not be compensated for in any manner except as used for sick leave as provided for in the Personnel Rules.

E. LIQUIDATION OF GENERAL LEAVE – CURRENT EMPLOYEES

Effective for Fiscal Years beginning July 1, 2008 and each July 1 thereafter during the term of this Understanding:

Employees who have a general leave balance of at least 75% of their maximum accruable leave at the end of the first pay period that ends in the preceding May (e.g., May 11, 2008 for the Fiscal Year beginning July 1, 2008) and have either fifteen (15) or more years of service or nineteen (19) or more years of service will have the option to make a once a year, irrevocable election to liquidate leave. Leave may be liquidated at the employees' base hourly rate of pay in one-hour increments up to the annual maximum liquidation limit. The applicable maximum liquidation limit will be based on the employee's years of service as of the end of the first pay period in May. This leave liquidation will be paid out in a lump sum on the first scheduled payday in the following August.

Years of Service	Maximum Accruable Leave	75% Qualifying Balance	Maximum Liquidation Limit
15-18	396 hours	297 hours	40 hours
19+	396 hours	297 hours	60 hours

F. LIQUIDATION OF OLD GENERAL LEAVE AT SEPARATION

All Old General Leave Bank hours earned on or before December 31, 1993 and on the books at termination shall be liquidated at separation at an hourly rate based on the following formula:

The monthly base pay in effect at time of separation plus 38.862% of monthly base pay multiplied by twelve (months in the year) divided by 2080 (the number of work hours in a year).

New General Leave accruals will not replenish or replace Old General Leave accruals.

G. LIQUIDATION OF NEW GENERAL LEAVE AT SEPARATION

All New General Leave Bank hours earned on or after January 1, 1994 shall be liquidated at the hourly base rate in effect at separation.

SECTION 2: HOLIDAYS

A. Holidays Recognized and Observed. The following days will be recognized and observed as paid holidays:

1. New Year's Day (January 1 or see B. 4 below)
2. The third Monday in January known as "Dr. Martin Luther King, Jr., Birthday"
3. The third Monday in February, known as "Presidents' Day"
4. The last Monday in May, known as "Memorial Day"
5. July 4, known as "Independence Day"
6. The first Monday in September, known as "Labor Day"
7. November 11, known as "Veteran's Day"
8. The Thursday in November appointed as "Thanksgiving Day"
9. The day following "Thanksgiving Day"
10. Christmas Eve (December 24 or see B. 4 below)
11. Christmas Day (December 25 or see B. 4 below)
12. New Year's Eve (December 31 or see B. 4 below)
13. One Floating Holiday (8 hours); each employee will be credited with 8 hours of non-accruable leave on the effective date of this agreement and each July 1 thereafter (hours to be prorated for new employees hired after the initial crediting). Hours may be scheduled to be taken as mutually agreeable to the employee and the department. Unused hours may not be carried over from one year to the next.

Every other day appointed by the President or Governor and authorized by the City Manager, or designated by the City Council for a public fast, Thanksgiving or holiday.

B. Regular Holiday Pay. Employees shall be compensated for holidays in the following manner:

1. All employees who are covered by this MOU shall continue to receive eight (8) hours of their current regular pay for each of the holidays listed above.
2. Whenever any of the holidays listed above shall fall on a Saturday, the preceding Friday shall be observed as the holiday.
3. Whenever any of the holidays listed above shall fall on a Sunday, the succeeding Monday shall be observed as the holiday.
4. The following special rules shall apply in connection with December 24 - 25 and December 31 - January 1 holiday periods:
 - a) When December 25 or January 1 fall on a Saturday, the previous Thursday and Friday shall be observed or credited as holidays;
 - b) When December 25 or January 1 fall on a Sunday, the previous Friday and the following Monday shall be observed and credited as holidays;
 - c) When December 25 or January 1 fall on a Monday, the following Tuesday shall be observed and credited as a holiday.
5. Notwithstanding the foregoing, the holidays specially proclaimed or appointed by the President, Governor or City Council (not specifically set forth above) shall be observed or credited only upon the day so proclaimed or appointed.

C. Eligibility Requirements. Employees shall establish their eligibility for holiday pay by working or being in a paid leave status on the regularly scheduled workdays before and after the day upon which the holiday is observed.

Employees who are absent from work without pay on either the scheduled workday before or after the day upon which the holiday is observed (or holidays if observed on consecutively scheduled workdays) shall not be eligible for nor receive holiday pay.

D. Work Assigned on Holidays. An employee assigned by the Department Head, or designated representative to work on any of the holidays listed above in Part A will receive one and one-half times his/her regular straight time rate in addition to regular holiday pay.

E. Holiday hours shall be prorated for employees that work less than a full-time schedule.

SECTION 3: FAMILY LEAVE

The City will comply fully with the requirements of the California Family Rights Act (CFRA), the federal Family and Medical Leave Act (FMLA), California requirements regarding the

Pregnancy Disability Act (pregnancy leave), the City of Fremont Personnel Rules (PR&R) regarding Leave Without Pay (LWOP), and the General Leave (GL) Plan.

The City's Administrative Regulations combines the rules and procedures of the above leave types and defines their application to City of Fremont employees.

SECTION 4: PERSONAL LEAVE DONATION

In the event of a medical, personal or family emergency, employees covered under this MOU may donate or receive accrued and/or prospective leave accruals to or from other City of Fremont employees. Donations and use of donated leave time shall be administered through a Personal Emergency Time (PET) Bank, provided as follows:

- A. For purposes of this section, "medical, personal, or family emergency" shall mean circumstances in which an employee needs to take time off from, or reduce, their regular work schedule as the result of the illness or injury of themselves or illness or injury of a family member which requires their care. "Family member" shall be defined as: 1) a biological, adopted, or foster child, a step child, a legal ward under 18 years of age, and an adult dependent child over 18 years of age; 2) a biological, foster, or adoptive parent, a stepparent, a legal guardian, or a person who stood in place of a parent to the employee; 3) a spouse as defined or recognized under State law for purposes of marriage in the State of California; or 4) another relative residing in and a member of the same household or a life partner residing in the same household who is not a legal spouse.
- B. Only accrued vacation or general leave and future, unaccrued vacation or general leave may be donated. Neither sick leave nor compensatory leave time may be donated.
- C. The recipient employee will not accrue seniority during any period of donated leave usage.
- D. The point at which an employee may request use of the PET Bank shall be when all general leave, compensatory time and sick leave banks, as applicable to the recipient employee, have been used down to an aggregate total of forty-five (45) hours and the employee anticipates that he/she will, because of the need to be absent from work more than forty-five (45) hours during the next pay period, use all existing aggregate hours.
- E. The recipient employee will be responsible for payment of taxes due on the salary received when the leave is used.
- F. The donating employee cannot donate future leave accruals beyond the extent of accrued leave available at the time of donation.
- G. The donating employee cannot donate accrued leave in excess of their existing vacation or general leave balance.

- H. The City will determine whether or not a leave of absence will be approved for the recipient employee and the OE3 Business Agent and Stewards will determine whether future leave accruals can be donated for the time off. The City will comply with Federal and State laws at all times and its guidelines will generally provide direction for evaluating leave requests.
- I. Neither the City nor the Bargaining Unit shall discriminate in any way with respect to the donation of accrued leave or future leave accruals based on race, religion, creed, political affiliation, color, national origin, ancestry, sex, marital status, age, sexual orientation, medical condition, or physical or mental disability.
- J. In instances when the receiving employee does not use all donated hours, the hours not used will, at the donating employees' election, either be placed in the PET Bank for use by other eligible employees or returned to the donating parties.
- K. A donating employee may designate a specific recipient to receive donated hours.
- L. Employees in the Bargaining Unit may give or receive hours across bargaining unit lines consistent with reciprocating agreements with other City of Fremont bargaining units.
- M. In the event the City adopts a city-wide PET Bank policy, the parties to this MOU shall meet and confer regarding the impact of implementing a city-wide PET Bank policy.

SECTION 5: ON THE JOB INJURY LEAVE

- A. The City and the Union agree that for injuries occurring on or after December 31, 2000, the first paragraph of Personnel Rule Article XII, Section 2.01, titled "Disability Leave" will no longer apply to employees covered by this agreement, and will be replaced instead by the following provisions.
- B. A full time, regular employee who is unable to work as a result of injury or illness determined to arise out of and in the course of his/her employment with the City of Fremont, shall be paid an amount which, together with the Workers' Compensation benefits to which he/she may be entitled, shall equal:
 - 1) His/her regular gross rate of pay for the first sixty (60) calendar days (or hourly equivalent); and
 - 2) 80% of his/her regular gross rate of pay for the sixty-first (61st) through the three hundred sixty-fifth (365th) calendar day (or hourly equivalent).
 - 3) The above benefits will cease when the employee is determined to be "permanent and stationary."
 - 4) Employees on disability leave shall not suffer any loss or reduction of seniority hours.

SECTION 6: BEREAVEMENT LEAVE

In the case of a death in the immediate family, employees may be granted a leave of absence of three (3) days as bereavement leave. Time taken shall be considered paid bereavement leave and will not be charged against the employee's accrued general leave.

"Immediate family" is defined as wife, husband, child, brother, sister, parent or current parent-in-law, grandparent or current grandparent-in-law, except that a relative residing in and a member of the same household, or a life partner residing in the same household who is not a legal spouse, may be considered as of the immediate family.

ARTICLE 4 - INSURANCE

SECTION 1: MEDICAL/DENTAL BENEFITS

- A. The City shall secure and make available to all eligible employees, medical care, dental care, accidental death and personal loss insurance, child care reimbursement and excess medical expense reimbursement under the Alternative Benefits and Compensation Plan (ABC Plan). The ABC Plan is a "cafeteria plan" as defined in Section 125 of the Internal Revenue Code.
- B. Employees in this unit shall not be permitted to enroll in any City sponsored health or dental care plans through December 31, 2007, but shall continue to participate in the life insurance programs sponsored by the City. It is understood and agreed that the City shall not be held responsible or liable for any matters, including the determination and payment of benefits arising in the administration of the Operating Engineers Health and Welfare Trust Fund for Northern California.
- C. Employees in this unit may enroll in the Operating Engineers Health and Welfare Trust Fund (the OE3 Trust) for Northern California to obtain medical and dental insurance coverage until December 31, 2007, or they may waive coverage in accordance with procedures established by the City. The City contribution for insurance and other benefit coverage available under the Alternative Benefits and Compensation Plan is known as the Health Benefits Allowance (HBA).

The HBA for employees who elect to waive coverage by the OE3 Trust, shall be Five Hundred Eighty Dollars (\$580.00) per month. Money not used for the purchase of benefits under the Plan will be paid to the employee in taxable cash.

- D. Effective January 1, 2008, Employees in this unit may enroll in medical plans provided through CalPERS to obtain medical insurance coverage and the Operating Engineers Health and Welfare Trust Fund (the OE3 Trust) for Northern California to obtain dental insurance coverage, or they may waive coverage, in accordance with procedures established by the City. The City contribution for insurance and other benefit coverage available under the Alternative Benefits and Compensation Plan is known as the Health Benefits Allowance (HBA).

Effective January 1, 2008, the HBA for employees who elect to waive medical and/or dental coverage in accordance with the provisions established by the City and do not purchase medical and/or dental benefits shall be Five Hundred Eighty Dollars (\$580.00) per month and will be paid to the employee in taxable cash.

- E. 1. Effective January 1, 2009, the HBA for those employees electing medical and dental coverage shall be as follows, or the actual premium amount, whichever is less.

Employee only \$ 684 per month

Employee +1 \$1330 per month

Employee +2 or more \$1733 per month

2. Effective January 1, 2010, the HBA for those employees electing medical and dental coverage shall be as follows, or the actual premium amount, whichever is less.

Employee only \$ 718 per month

Employee +1 \$1397 per month

Employee +2 or more \$1820 per month

3. Effective January 1, 2011, the HBA for those employees electing medical and dental coverage shall be as follows, or the actual premium amount, whichever is less.

Employee only \$ 790 per month

Employee +1 \$1537 per month

Employee +2 or more \$2002 per month

- F. Employees electing to purchase medical and dental benefits will not be eligible for taxable cash as set forth in Section D above. In the event premiums and/or costs for the selected benefits exceed the amount in the Health Benefits Allowance in Section E.1, E.2 and E.3, the balance will be paid by the employee through automatic payroll deduction, as allowed under Internal Revenue Code Section 125.

- G. For the purpose of description of plans, the coverage's, exclusions, and limitations of the City sponsored plans and the OE3 Trust plans are those in force on January 1, 2007.

- H. In the event that the benefits in this Article become fully subject to federal or state taxation, the City and the Operating Engineers shall meet in a timely manner to discuss the impact.

SECTION 2: HEALTH INSURANCES

In the event the Federal government implements a nation-wide health care plan that mandates changes to the health and welfare programs described in this MOU the City and the Union agree to meet in a timely manner to discuss the impact.

SECTION 3: MEDICAL INSURANCE FOR RETIRED EMPLOYEES

A. Effective October 1, 2000, medical premium reimbursement for OE3 retirees is as shown:

<u>Retirement Dates</u>		<u>Medical Reimbursement</u>
<u>From</u>	<u>Through</u>	<u>of Health Premium</u>
2-1-77	6-30-87	Employee only = \$57.88 Employee + 1 = \$63.98 Employee + 2 = \$79.85
7-1-87	6-30-91	Up to \$415/month
7-1-91	6-30-92	Up to \$475/month
7-1-92	6-30-97	Up to \$525/month
7-1-97	6-30-98	Up to \$554/month
7-1-98	6-30-99	Up to \$580/month
7-1-99	6-30-00	Up to \$605/month
7-1-00	6-30-01	Up to \$703/month
7-1-01	6-30-02	Up to \$733/month
7-1-02	6-30-05	Up to \$763/month

B. 1. An employee who is hired on or after January 10, 2006 (Council adoption of this MOU) is eligible for the medical premium reimbursement set forth in Section B.2. below if he/she meets all the following criteria:

- a. retires from the City of Fremont within 120 days of separation,
- b. is vested with CalPERS,
- c. has completed at least five (5) years of continuous service with the City,
- d. is at least age 50 or has received a CalPERS disability retirement as a result of employment with the City of Fremont.

2. The actual amount of medical premium reimbursement the City will contribute on the employee's behalf will be based on the employee's total years of City service as provided in the following chart.

Employee Years of Service at Retirement	City Base Contribution	Adjustment for Years of Service (\$/mo.)	Total City Contribution (\$/mo.)
0 to 5	\$0	\$0	\$0
6 to 9	\$200	\$0	\$200
10 to 14	\$200	\$182	\$382
15 to 19	\$200	\$372	\$572
20 or more	\$200	\$563	\$763

- C. The amount of City reimbursement shall not exceed the premium required for the retiree's particular level of coverage in the plan selected. Retirees are eligible for reimbursement for the OE3 Trust Fund or another medical insurance plan. Retirees must comply with the processes and procedures established by the City for verification of enrollment, cost of plan and other required information to maintain their eligibility for reimbursement. Failure to comply with reasonable City requirements will result in the retiree forfeiting all future City reimbursements.

It is further understood that should the Union elect to continue medical insurance premium coverage for any or all retired employees, any cost increases occurring and projected at the time of negotiation of a new MOU shall be considered a cost to the new agreement.

SECTION 4: LIFE INSURANCE COVERAGE

All employees covered by this MOU shall be provided Fifty Thousand Dollars (\$50,000.00) of group term life insurance under a program to be selected and administered by the City.

SECTION 5: SHORT TERM/LONG TERM DISABILITY

- A. The maximum amount of insurable salary under the Short Term/Long Term Disability plans shall be the employee's total base salary, not to exceed \$15,000 per month, but not include any special allowances.
- B. The Short Term/Long Term Disability plans will be selected and administered by the City and shall be made available to all members of the unit.
- C. Effective January 1, 2010, any employee electing coverage under the Short Term/Long Term Disability plans will assume responsibility for payment of the entire insurance premium on an after-tax basis. Effective January 1, 2010, the City will credit the employees pay with an amount equal to the premium for the Long Term Disability Plan.

D. CATASTROPHIC SICK LEAVE BANK

A Catastrophic Sick Leave Bank of two-hundred fifty (250) hours will be available for use by members of the Union until the City Short Term/Long Term Disability plans are implemented. Once the Short Term/Long Term Disability plans are available this Section of the Memorandum of Understanding will be void.

Employees shall be required to exhaust any and all available leave banks for the first thirty (30) days of leave prior to utilization of the Catastrophic Leave Bank. For days thirty one (31) through sixty (60), the employee may request going to a Leave Without Pay status prior to using Catastrophic Sick Leave. The purpose of the Catastrophic Sick Leave Bank is to enable the employee to receive full pay and benefits to the maximum extent possible but not to exceed their regular salary and benefits for the period between the 31st day and 60th day of disability for those employees who shall be disabled and approved for Salary Continuation benefits by the Long Term Disability Insurance carrier upon submitting a claim under the policy. Payment of Catastrophic Sick Leave shall cease upon payment by the insurance company of Long Term Disability Insurance. Employees requesting use of Catastrophic Sick Leave shall submit a written request which shall be subject to review and approval of the Union's Chief Steward, or designee, and the Personnel Manager or designee.

ARTICLE 5 - RETIREMENT**SECTION 1: PUBLIC EMPLOYEES RETIREMENT SYSTEM**

The City agrees to continue the existing contract with PERS for employee retirement benefits which provides the 2.5% @ 55 retirement formula.

SECTION 2: CONVERSION OF EMPLOYER PAID MEMBER CONTRIBUTION TO BASE SALARY

Operating Engineers Local No. 3 and the City jointly acknowledge that Government Code Section 20022 defines compensation for the application of the Public Employees' Retirement Law (Government Code Section 20000 et seq.), and that the Board of Administration is expressly granted the authority to determine what constitutes compensation. Operating Engineers Local No. 3 hereby expressly acknowledges that the City neither represents nor guarantees that items reported in this Chapter as compensation will be included in the calculation of retirement benefits nor does it assume any liability for a determination by PERS or any court or adjudicatory body that an item is not compensation for the purpose of calculating retirement benefits under the California Public Employees' Retirement Act.

**SECTION 3: IMPLEMENTATION OF INTERNAL REVENUE CODE SECTION 414(H)
(2) EMPLOYER PICKUP**

Effective 0001 hours January 1, 1994, the City increased the base salary of employees encumbering positions represented by Operating Engineers Local No. 3 in the amount of six and sixty-one hundredths percent (6.61%), and employees assumed responsibility for payment of the normal employee retirement contribution to the Public Employees' Retirement System (PERS). The City has designated such payment as an "Employer Pickup" as defined under the provisions of Section 414 (h) 2 of the Internal Revenue Code.

SECTION 4: MILITARY SERVICE CREDIT

The City shall provide the following Public Employment Retirement System optional contract provisions, with the eligible employee required to contribute both the employer's and employee's contributions and interest: Military Service Credit, as specified in Section 20930.3 of the Government Code.

SECTION 5: PERS RETIREMENT ENHANCEMENTS

<u>LIST OF BENEFITS</u>	<u>EFFECTIVE DATES</u>
Military Service Credit	9/16/77
1-Year Final Comp.	7/1/87
Death Benefit/Remarriage	1/1/00
3% COLA	7/29/01
4 th Level 1959 Survivor	7/29/01
2.5% @ 55 Retirement Formula	8/11/02

ARTICLE 6 - HOURS AND SCHEDULING**SECTION 1: ALTERNATE WORK SCHEDULES**

The City and the Union entered into a Side Letter of Agreement regarding the implementation of a 9-80 work schedule on April 1, 1994. The parties have agreed to extend the Side Letter through the term of this MOU.

SECTION 2: EARLY SHIFT SCHEDULING

Employees temporarily assigned to begin working a scheduled shift at or after 6:00 a.m. but prior to 6:30 a.m., shall end their regular work day after eight and one-half (8 ½) hours of work but compensation paid for the day's work shall be for nine (9) hours.

Employees temporarily assigned to begin working a scheduled shift before 6:00 a.m. shall end their regular work day after eight and one-quarter (8 ¼) hours of work but compensation for the day's work shall be for nine (9) hours.

Upon Union ratification and Council approval of this Agreement, employees whose regular assigned duties on the effective date of this agreement are to operate a street sweeper shall have the option to volunteer for a 5:00 a.m. or a 7:00 a.m. starting time without the reduced work day. Future election shall be at the same time as the "assignment bid." Current sweeper operators shall keep their assigned routes. Newly hired or promoted sweeper operators will choose their start time (from the two options above) when hired or promoted and may then elect between the two options each year at the same time as the "assignment bid."

SECTION 3: CLEAN UP TIME

All employees in any of the following sections will be allowed adequate time to clean themselves, the work site, and tools and equipment at the close of each employee's scheduled workday:

Auto Shop	Parks	Survey
Public Buildings	Construction Inspection	Recreation
Streets		

SECTION 4: ASSIGNMENT BID SYSTEM

- A. Assignment bids shall be used for all Park Maintenance Worker I and II positions, and all Street Maintenance Worker I and II positions.
- B. The bidding of positions will be administered by a joint committee consisting of two (2) management and two (2) union representatives. The joint management/union committee will develop a written procedure for administering the Assignment Bid System. When an impasse in the administration and application of this program exists in the joint committee the Division Head shall make the final decision.
- C. Bidding shall be done in an open meeting with all eligible employees. There shall be two (2) weeks notice prior to the meeting. Employees unable or not choosing to attend may identify their bid choices, in writing, prior to the meeting, to their union representative.
- D. Once a year on a date to be determined by the joint labor/management committee any employee in a permanent assignment may request inclusion in a reassignment bid:
 - 1. Bids for reassignment will be for all positions volunteered by the incumbent, and
 - 2. Reassignment will be based on the seniority of those employees participating in the reassignment bid.
- E. The employee having the highest seniority will have first choice for a position. Seniority shall be determined based on an employee's original date of hire in their current maintenance series.

If multiple employees have the same department hire date the employee with the most actual hours worked as a City of Fremont employee shall be most senior among them and so on for each in any group of similarly situated employees.

- F. In filling positions for which no bids are received the employee with the lowest seniority will be assigned.
- G. Training assignments are for Parks Maintenance Worker I and Street Maintenance Worker I positions. Training assignments shall be bid by seniority for periods of up to one (1) year when:
 - 1. The employee bidding has less than ten (10) years of service and,
 - 2. The employee bidding has not previously worked in the assignment area.
- H. The following assignments are exempt from the bidding process and shall be made by the Division Head/designee:
 - 1. Temporary assignments less than six (6) months to fill vacancies due to terminations or leaves of absences.
 - 2. Reassignment due to performance or production issues.
- I. Temporary assignments shall not exceed six (6) months. Employees so assigned shall revert to their previously held position upon expiration of the assignment.

ARTICLE 7 - GRIEVANCES

SECTION 1: ARBITRATION

The Union and the City do hereby agree that, unless earlier resolved under these procedures, the final resolution of any grievance available to an employee covered by the provisions of this MOU shall be by final and binding arbitration. The City Council hereby formally confers upon the City Manager the responsibility to carry out any lawful decision of an arbitrator made pursuant to this procedure.

SECTION 2: GRIEVANCE PROCEDURE

A. PURPOSE OF THE PROCEDURE

- 1. To establish orderly procedures providing a method of communication between employees and management concerning matters subject to grievance.
- 2. To provide that grievances shall be settled as promptly as possible and at the lowest possible level of the procedure.

3. To provide employees, individually or with a representative of their own choosing, a systematic means of obtaining formal consideration by higher authority, if reasonable efforts fail to resolve such matters through informal procedure.

B. MATTERS SUBJECT TO GRIEVANCE PROCEDURE

1. Grievances. A grievance shall be defined as any complaint or dispute concerning the interpretation or application of:
 - a) any City ordinance;
 - b) any rule or regulation of the City or the Department governing personnel practices or working conditions;
 - c) the practical consequences of a City's rights' decision on wages, hours, or other terms and conditions of employment, provided said consequences were not previously the subject of "meet and confer"; or
 - d) the interpretation or application of any of the provisions of the Memorandum of Understanding between the Operating Engineers Local No. 3 and the City of Fremont.
2. Exclusions/Limitations. The procedure set forth shall be subject to the following exclusions or limitations:
 - a) Probationary employees who are rejected during probation shall have no right of appeal under this section unless the employee alleges the dismissal was based in whole or in part on their race, religion, creed, color, sex, marital status, age, sexual orientation, physical or mental disability, medical condition, Union affiliation or lawful activities, or national origin;
 - b) Appeals of worker's compensation claims;
 - c) Unemployment Insurance claims; or
 - d) Other matters where dispute resolution has been specifically provided for in State or Federal Law.

C. GENERAL

1. The time limits set forth herein may be extended by mutual consent or for good cause, such as legitimate absence of one or more parties, including representatives, or because of injury, illness, official obligations, or unavoidable personal obligations. An extension of time limits shall be confirmed in writing.
2. If either party raises the question of arbitrability, such question shall be determined by the arbitrator prior to hearing the merits of the case.

D. PROCEDURE

1. Step I. The affected employee(s) shall present the grievance orally to the immediate supervisor within thirty (30) calendar days of the occurrence of the issue grieved or within thirty (30) days from such time as the employee or Union should reasonably have been aware of the occurrence (whichever is lesser).
2. Step II. Should the grievance remain unresolved within ten (10) calendar days after an oral presentation, the employee or his representative may submit the grievance in writing to the immediate supervisor within ten (10) additional calendar days. The written grievance shall make reference to the statute, ordinance, rule, regulation, or MOU provision alleged to be controlling, and shall include the proposed remedy sought. The supervisor shall then render a written decision to the employee within ten (10) calendar days.
3. Step III. Should the grievance remain unresolved, the employee or his representative shall, within ten (10) calendar days after receipt of the supervisor's decision, submit the written grievance to the Department Head.
4. Step IV. Should the grievance remain unresolved, the employee or Union representative and steward may, within ten (10) calendar days after receipt of the Department Head's written response, submit the grievance in writing to the City Manager or his/her designee. The City Manager, or designated representative, shall meet as deemed appropriate, with the affected employee and with the assigned Union representative and steward within ten (10) calendar days of submission and attempt to resolve the dispute.
5. By mutual agreement, the parties may submit the dispute to a mutually-selected mediator or facilitator, or use a self-mediated settlement process. The results of this elective process are non-binding.

The parties will develop a list of prospective mediators and a process for selection and contact. The mediators should have both process and content skills. The parties agree to rotate responsibility for making arrangements. The list will be subject to ongoing review and update.

6. Step V. Should the grievance not be resolved to the satisfaction of the Union, the Union shall request arbitration by written notice to the City within ten (10) calendar days following receipt of the City Manager's decision.
7. Upon notice of intent to arbitrate, the Union and the City shall meet to select an arbitrator. If unable to mutually agree on the selection of an arbitrator, then a list of available arbitrators shall be obtained from the State of California Department of Industrial Relations or, upon mutual consent, from the American Arbitration Association. Upon receipt of such list, the parties shall meet and if unable to mutually select an arbitrator from such list, then a coin shall be flipped and the party correctly calling the coin flip shall strike a name from the list. The parties

shall then alternately strike names from the list until only one name remains and that individual shall be the arbitrator. In the event the arbitrator so selected is not available, then the individual whose name was last struck from the list shall be the arbitrator. If that individual is not available, then the Union and the City shall request another list or select an arbitrator through any other mutually agreed upon process.

8. The parties agree to select an arbitrator within 30 days of the request for arbitration. If selection of an arbitrator exceeds 30 days following the date of notification, the other party will select the arbitrator.
9. Decision of the Arbitrator. The decision, opinion, and award of the arbitrator shall be final and binding upon all parties, subject to review only under the provisions of California Code of Civil Procedure Section 1280 et seq. The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this MOU and shall not have jurisdiction to make any award which would not have been authorized under applicable authority in the absence of this agreement to arbitrate, except by the joint prior authorization of the parties hereto.

SECTION 3: MISCELLANEOUS PROVISIONS

- A. All arbitration proceedings under this part shall be governed by the California Arbitration Act (C.C.P. Section 1280 et seq.), and any action brought by any party to enforce the provisions hereof shall be brought solely and exclusively under said part.
- B. Concurrent grievances alleging violation of the same provision may be consolidated for the purpose of this procedure to be determined in one proceeding.
- C. The City shall prepare in blank and deliver to the arbitrator subpoenas for issuance by him/her. The arbitrator may, in his/her discretion, require a showing of good cause prior to the issuance of any subpoena.

On noticed application by the City, the arbitrator may order the Union to reimburse the City for its costs incurred in paying any City employee for time spent responding to subpoena issued at the request of the Union or any member thereof. Such reimbursement shall be ordered only upon a finding that the compelled attendance of a City employee did not contribute substantially to the resolution of the matter being arbitrated, or that the party compelling such attendance failed to exert reasonable efforts to minimize standby time of the City employee.

- D. The Union and the City agree to share equally all costs of the arbitrator and to be responsible for their own respective costs of making their presentation to the arbitrator.
- E. If by mutual agreement or requirement of the arbitrator, services of a court reporter are utilized, the parties agree to equally share the cost of such service. Any cost for transcription shall be borne by the party requesting it.

- F. While either the employee or the Union may initiate a grievance under the formal procedure (or they may join together in the procedure), once the grievance has been presented no other grievance concerning the incident or action upon which the complaint is based may be initiated.
- G. The Union, when the initiating party, shall be subject to all policies and assume all rights and responsibilities of the grievance procedure which are granted to or required of the employee.

ARTICLE 8 - APPEALS ON DISCIPLINE

SECTION 1: ARBITRATION

The Union and the City do hereby agree that, unless earlier resolved under these procedures, the final resolution of any appeal of disciplinary action available to an employee covered by the provisions of this MOU shall be by final and binding arbitration. The City Council hereby formally confers upon the City Manager the responsibility to carry out any lawful decision of an arbitrator made pursuant to this procedure.

SECTION 2: APPEAL PROCEDURE

A. PURPOSE OF THE PROCEDURE

1. To establish orderly procedures providing a method of communication between employees and management concerning matters subject to appeal.
2. To provide that appeals from discipline shall be settled as promptly as possible and at the lowest possible level of the procedure.
3. To provide employees, individually or with a representative of their own choosing, a systematic means of obtaining formal consideration by higher authority, if reasonable efforts fail to resolve such matters through informal procedure.

B. MATTERS SUBJECT TO DISCIPLINARY APPEAL PROCEDURE

For the purpose of this procedure, an "Appeal" shall be defined as a complaint or dispute as to any disciplinary or punitive action and shall include:

- a) dismissal;
- b) demotion;
- c) suspension;
- d) reduction in salary;
- e) transfer imposed for punishment.

C. EXCLUSIONS/LIMITATIONS

The procedure set forth shall be subject to the following exclusions or limitations:

- a) Probationary employees who are rejected during probation shall have no right of appeal under this section unless the employee alleges the dismissal was based in whole or in part on their race, religion, creed, color, sex, marital status, age, sexual orientation, physical or mental disability, medical condition, Union affiliation or lawful activities, or national origin;
- b) Appeals of worker's compensation claims;
- c) Unemployment Insurance claims; or
- d) Other matters where dispute resolution has been specifically provided for in State or Federal Law.
- e) Written reprimands may be appealed to the City Manager within ten (10) calendar days of receipt. The City Manager or designee, other than the Department Head involved, shall review the circumstances and render a written decision within fourteen (14) days of review. The decision of the City Manager/designee shall be final and conclusive.

Employees may request that Letters of Reprimand be removed from their file after three (3) years, provided that there is no recurrence of the same or similar incident.

- f) The parties have already negotiated attendance standards. The standards will be applied in evaluating attendance and attendance-related issues.

D. GENERAL

1. The time limitations may be extended by mutual consent or for good cause, such as legitimate absence of one or more parties, including representatives, or because of injury, illness, official obligations, or unavoidable personal obligations.
2. If either party raises the question of arbitrability, such question shall be determined by the arbitrator prior to hearing the merits of the case.
3. Nothing in these procedures shall be construed to prevent discussion or meetings between parties at any time to clarify the facts in order to conclude any matter as promptly as possible.
4. Supervisors will inform employees of their right to representation, or employees may request and arrange for Union representation at any step in the discipline process. A request for representation will not unnecessarily delay the process.

E. PROCEDURE

The procedure for the pre-disciplinary meeting shall be as described by the Administrative Regulation.

1. **Timeline After “Skelly” Review:** In the event a determination has not been reached within two (2) weeks following the conclusion of the “Skelly” disciplinary review, the Skelly officer will inform the employee and Union how much longer he/she anticipates the investigation will take before a determination is rendered.
2. Before arbitration, the parties may submit the dispute to a mutually-selected mediator or facilitator, or use a self-mediated settlement process.
3. **Selection of Arbitrator:** Should the City or employee not be satisfied with the results of the pre-disciplinary meeting, either party may request arbitration of the decision. The request for arbitration shall be made by written notice submitted to the other party within ten (10) calendar days following receipt of the results of the pre-disciplinary meeting.

Upon notice of intent to arbitrate, the Union and the City shall meet to select an arbitrator. If unable to mutually agree on the selection of an arbitrator, then a list of available arbitrators shall be obtained from the State of California Department of Industrial Relations or, upon mutual consent, from the American Arbitration Association. Upon receipt of such list, the parties shall meet and if unable to mutually select an arbitrator from such list, then a coin shall be flipped and the party correctly calling the coin flip shall strike a name from the list. The parties shall then alternately strike names from the list until only one name remains and that individual shall be the arbitrator. In the event the arbitrator so selected is not available, then the individual whose name was last struck from the list shall be the arbitrator. If that individual is not available, then the Union and the City shall request another list or select an arbitrator through any other mutually agreed upon process.

The parties agree to select an arbitrator within 30 days of the request for arbitration. If selection of an arbitrator exceeds 30 days following the date of notification, the other party will select the arbitrator.

4. **Decision of the Arbitrator:** The decision, opinion, and award of the arbitrator shall be final and binding upon all parties, subject to review only under the provisions of the California Arbitration Act (C.C.P. Section 1280 et seq). The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this MOU and shall not have jurisdiction to make any award which would not have been authorized under applicable authority in the absence of this agreement to arbitrate, except by the joint prior authorization of the parties hereto. In any disciplinary appeal from a termination, suspension, reduction in pay, transfer, or demotion, any relief which the arbitrator may grant shall be limited to a rescission of the action appealed from, a restoration of any lost pay and benefits, and, where the arbitrator deems it appropriate, the imposition of substitute discipline composed of a suspension

without pay of not more than six (6) months, a reduction in pay, a transfer to an established position, a demotion, or a combination of any or all of these forms of disciplinary action.

SECTION 3: MISCELLANEOUS PROVISIONS

- A. All arbitration proceedings under this part shall be governed by the California Arbitration Act (C.C.P. Section 1280 et seq.), and any action brought by any party to enforce the provisions hereof shall be brought solely and exclusively under said part.
- B. Concurrent grievances alleging violation of the same provision may be consolidated for the purpose of this procedure to be determined in one proceeding.
- C. The City shall prepare in blank and deliver to the arbitrator subpoenas for issuance by him/her. The arbitrator may, in his/her discretion, require a showing of good cause prior to the issuance of any subpoena.

On noticed application by the City, the arbitrator may order the Union to reimburse the City for its costs incurred in paying any City employee for time spent responding to subpoena issued at the request of the Union or any member thereof. Such reimbursement shall be ordered only upon a finding that the compelled attendance of a City employee did not contribute substantially to the resolution of the matter being arbitrated, or that the party compelling such attendance failed to exert reasonable efforts to minimize standby time of the City employee.

- D. The Union and the City agree to share equally all costs of the arbitrator and to be responsible for their own respective costs of making their presentation to the arbitrator.
- E. If by mutual agreement or requirement of the arbitrator, services of a court reporter are utilized, the parties agree to equally share the cost of such service. Any cost for transcription shall be borne by the party requesting it.
- F. The Union and the City endorse the principle that disclosure of information relating to contemplated impositions of employee discipline may, in many instances, serve no public purpose and may be harmful to the City, the Union, and the employee concerned. This endorsement of principle is not intended to create any enforceable rights on the part of any person or entity.
- G. While either the employee or the Union may initiate a grievance under the formal procedure (or they may join together in the procedure), once the grievance has been presented no other grievance concerning the incident or action upon which the complaint is based may be initiated.
- H. The Union, when the initiating party, shall be subject to all policies and assume all rights and responsibilities of the grievance procedure which are granted to or required of the employee.

ARTICLE 9 - UNION ISSUES

SECTION 1: NOTICE TO UNION OFFICE

Whenever the City serves written notice upon representatives of the bargaining unit, a copy of such notice shall be sent directly to the Local Union No. 3 office.

SECTION 2: ORGANIZATION BUSINESS

- A. Union Steward(s) shall be allowed time off with pay when approved by the Municipal Employee Relations Officer (City Manager), or designee, for the purpose of conducting Union business. It shall be the responsibility of each union steward to advise his/her supervisor of the expected absence from regular duties for the conduct of Union business.
- B. With respect to the meet and confer process, four (4) Union representatives shall be the maximum number of employees who will be allowed concurrent time off without loss of compensation. The Union shall submit the names of all such employee representatives to the Municipal Employee Relations Officer. The employee representatives shall request release time from their supervisors in advance of leaving their work assignments to attend meet and confer sessions. Approval of release time shall not be unreasonably denied.

SECTION 3: UNION SECURITY/AGENCY SHOP

A. DEFINITIONS

For the purpose of this Section the terms used herein have the following meaning:

- 1. "Bargaining Unit" shall consist of all persons employed by the City of Fremont in the classifications represented by Operating Engineers, Local No. 3.
- 2. "Agency Shop" shall mean, that except as provided otherwise in this Section, employees in the bargaining unit referred to in Section 1, shall, as a condition of continuing employment, become and remain members of OE3 or shall pay to OE3 a service fee or make a religious exemption payment in lieu thereof. Such service fee or religious exemption payment is currently ninety-eight percent (98%) of Union dues and initiation fees (hereinafter collectively termed "service fee" or "religious exemption fee") of the Union representing the employee's classification.
- 3. "Service Fee" shall mean a fee covering the cost of representation incurred by the employee organization in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of such organization.
- 4. "Religious Exemption" shall mean an arrangement whereby any employee who is a member of a bona fide religion, body or sect which has historically held conscientious objection to joining or financially supporting public employee

organizations shall not be required to join or financially support any public employee organization as a condition of initial or continued employment. Such members of the bargaining unit shall be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to such dues, initiation fees, or agency shop fees to a non-religious, non-labor charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as designated in this Agreement. Such payments shall be made by payroll deduction on a monthly basis to the City as a condition of continued exemption from payment of union dues or a service fee.

B. AGENCY SHOP OPERATING PROCEDURES

1. All bargaining unit members employed as of the effective date of this Agreement and thereafter during the term of this Agreement shall, as a condition of continuing employment with the City, be subject to mandatory payroll deduction in an amount equal to union dues, a service fee or a religious exemption payment in the case of employees who certify that they are members of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting public employee organizations. Religious exemption payment shall be collected by the City and paid to Tri-Cities Homeless Shelter, SAVE (Shelter Against Violent Environments), Second Chance, or CURA, Inc.
2. Any employee hired by the City subject to this MOU shall be provided with a notice advising that the City has entered into an agency shop agreement with the Union and that all employees subject to the MOU must within 30 days of employment either join the Union, pay a service fee to the Union, or execute a written declaration claiming a religious exemption from this requirement. A unit member failing to make an election during the first 30 days of employment shall be assigned the service fee option by the City.
3. The service fee payment shall be established annually and such agency shop service fee will be used by the Union only for the purposes of collective bargaining, contract administration and matters authorized by law.
4. OE3 will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker not chosen by OE3 and may make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending.
5. The Union shall defend, indemnify and save harmless the City, its officers and employees from and against any and all loss, damages, costs, expenses, claims, attorney fees, demands, actions, suits, judgments, and other proceedings arising out of any action relating to this provision; except where such claims are based solely on the alleged negligence of the City in erroneously deducting a service fee in the absence of fault or negligence by the Union. Legal counsel retained by OE3 for any representation pursuant to this Section shall be subject to approval of the City, which shall not be unreasonably denied.

C. RESCISSION OF AGENCY SHOP

This agency shop arrangement may be rescinded by a majority vote of all the employees in the bargaining unit as provided in Government Code 3502.5(b) and any subsequent State laws.

ARTICLE 10 - MISCELLANEOUS

SECTION 1: CREDIT UNION DEDUCTION

The City agrees that for employees covered by this MOU it shall deduct from their paychecks such sums as may be authorized by the employee for payment to either the City and County Employees Credit Union of Alameda County or the Operating Engineers Credit Union of Northern California.

SECTION 2: SAFETY GOGGLES

The City shall provide, at its expense, safety goggles to Park Maintenance personnel. If such goggles prove to be unsatisfactory, the City and representatives of the Union shall meet and confer on alternate methods of providing such safety precautions.

SECTION 3: EMPLOYEE EVALUATION APPEALS

Employees may appeal a performance evaluation in the following manner:

1. The employee must appeal the evaluation in writing to the evaluator's immediate supervisor.
2. Upon receipt of the request for reconsideration of the performance evaluation, the supervisor must notify the employee in writing of the determination of the appeal.
3. If the determination does not satisfy the employee's concerns, the employee may appeal in writing to the appropriate Division Head.
4. Upon receipt of the request for reconsideration of the performance evaluation, the appropriate Division Head must notify the employee in writing of the determination of the appeal.
5. The disposition of an appeal of a performance evaluation by the appropriate Division Head shall be final.

SECTION 4: LIGHT-DUTY ASSIGNMENTS

The City, in granting light-duty assignments, shall first attempt to assign duties to the employee on light-duty which are within the employee's job classification duties.

SECTION 5: AMERICANS WITH DISABILITIES ACT

It is the City's intent to comply fully with the requirements of the Americans with Disabilities Act regarding reasonable accommodation of employees with disabilities.

SECTION 6: SUBSTANCE ABUSE POLICY

The City and the Union have met, discussed, and agreed upon a Substance Abuse Policy. The City and the Union have discussed the development of a program for drug and alcohol testing. The intent is to develop a drug and alcohol testing program to cover all City employees. The City and the Union agree that the presence of drugs and alcohol in the workplace is a serious problem and will cooperate to see that City employees are working in a drug and alcohol free environment.

As a result of the aforementioned discussions, the Union agrees and supports the City's Substance Abuse Policy.

SECTION 7: VARIABLE DEMAND HIRING

The City may hire employees to work for less than twenty (20) hours per week for an unlimited duration. These employees will be used when a department has a specific need to perform work on an ongoing basis which requires fewer than twenty (20) hours work per week.

SECTION 8: PROBATIONARY PERIOD

The probationary period for all classifications covered by this bargaining unit shall be six (6) months.

SECTION 9: CONTINUING DISCUSSION

The Union and the City agree to continue discussions, during the term of this agreement, regarding Commercial Driver's license requirements and maintaining United States Department of Transportation (USDOT) requirements for positions represented by the union.

SECTION 10: JOINT LABOR-MANAGEMENT COMMITTEE

The parties have agreed to convene a Joint Labor-Management Committee to meet and discuss a variety of topics of interest to both parties. The parties have agreed their first task will be to develop ground rules, composition of the Joint Labor-Management Committee, and meeting format and frequency. The parties have agreed to use a facilitator as needed and as available.

SECTION 11: TUITION REIMBURSEMENT

Commencing on the effective date of this MOU, the City will make available a Tuition Reimbursement Program to permanent employees in the unit. Non-probationary employees with at least six months of full time service with the City are eligible for reimbursement. The maximum reimbursement shall be \$600 per employee per fiscal year. Courses eligible for reimbursement are those taken at an accredited college or university (including extension courses) related to employment, including promotional opportunities.

Reimbursement will be provided under the following circumstances:

- A. Courses must be pre-approved as job related by the Department head.
- B. Eligible expenses include required textbooks, tuition, fees, lab fees, and equipment, but will not include parking fees or health fees related to enrollment.
- C. Employees must attain a grade of "C" or better for undergraduate or extension work and "B" or better for graduate work. Courses providing a "pass/fail" option must have a "pass" to qualify for reimbursement.
- D. Requests for reimbursement shall be submitted in accordance with procedures developed by the City. A request for reimbursement will not be considered submitted until it includes the relevant receipts and proof that the necessary grade was earned.
- E. Requests for reimbursement must be submitted within 30 calendar days of the end of a fiscal year to be allocated to that fiscal year.
- F. Monies expended on tuition reimbursement will be subject to the appropriate IRS regulations.

SECTION 12: REQUEST FOR CalPERS ACTUARIAL VALUATION

The City and the Union agree to request an actuarial valuation from the California Public Employees' Retirement System (CalPERS) to determine the cost of the following optional retirement benefit:

Section 21548 Pre-Retirement Optional Settlement 2 Death Benefit

The actuarial valuation will be requested by August 2008 in preparation for contract negotiations between the City and the Union in 2009. The request for the valuation is made to assist the parties in freely exchanging information during the 2009 collective bargaining process.

The City and the Union each agree to pay for one half of the fee(s) required for the valuation. By agreeing to fund one half of the cost of the valuation, the City does not make either an express or implied endorsement of the optional benefit.

ARTICLE 11 - TEMPORARY AND PROVISIONAL WORKERS

SECTION 1: EMPLOYMENT OF TEMPORARY WORKERS

The following procedures shall apply to persons employed on a temporary basis in classifications represented by the Union:

- A. Temporary work performed within the scope of a classification represented by the Union shall only be permitted in one of the following circumstances:
 - 1. When filling allocated budgeted position vacancies during the absence of an employee on an approved leave or in a leave without pay status;
 - 2. When staffing temporary positions established for a specific project(s) with a scheduled time of completion or specific limitation on funding;
 - 3. When workload requirements necessitate additional staffing and a provisional or probationary appointment cannot be made due to financial, operational or workload considerations, subject to the following limitations: No such assignment shall last for more than two years;
 - 4. When filling staffing needs on a short duration basis or for tasks beyond those which can normally be accomplished by existing staff on an overtime basis. No employee under this subsection shall be employed in a temporary capacity for more than 999 hours. Under this subsection, no temporarily vacant position shall be filled by a temporary employee for more than 999 hours;
 - 5. Persons hired through a temporary employment agency are not employees of the City and are excluded from the procedures of this Article.
- B. Persons appointed on a temporary basis shall be so appointed in accordance with the following:
 - 1. Employees hired under this Article will be paid the applicable rate of pay for the classification to which assigned;
 - 2. Temporary employees hired for periods which are expected to exceed 1000 hours shall receive all health and welfare and pension and other contractual entitlements of classified employees including ABC Cafeteria Plan enrollment from time of appointment;
 - 3. Temporary employees hired for periods which are expected to be less than 1000 hours in duration shall receive an additional 15% of base pay in lieu of benefits for the duration of the temporary appointment or until such employee becomes eligible for benefits as described in subparagraph 4 below;

4. Any temporary employee who remains employed beyond 1000 hours shall be eligible for and will be offered the full employee benefit package available under this MOU. Such enrollment shall be effective the first day of the month following the date the employee attains 1000 hours of employment except that enrollment in the Public Employees Retirement System (PERS) shall begin immediately upon attainment of eligibility under the Public Employee's Retirement Law. Upon enrollment in the benefit plans, payment of the 15% benefit in lieu payments shall cease. Additionally, the employee shall be credited with general leave and holiday time (for any holidays which occurred in the first 1,000 hours of work), equal to the amount which would have accumulated by the employee during the period prior to implementation of benefits.

SECTION 2: EMPLOYMENT OF PERSONS IN A PROVISIONAL STATUS

A person who is hired on a provisional basis on or after July 1, 2005 and is subsequently hired into a regular, classified position, shall receive seniority credit for time spent in a provisional status on an hour for hour basis upon completion of the probationary period provided there is no break in service between separation from the provisional position and appointment to the classified position.

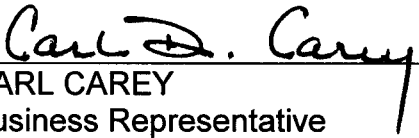
ARTICLE 12 - TERM OF UNDERSTANDING

SECTION 1: TERM

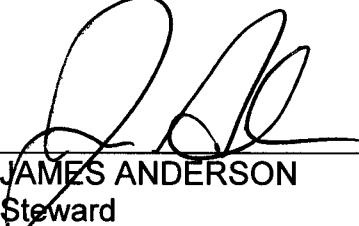
This Memorandum of Understanding incorporates all modification regarding wages, hours and other terms and conditions of employment. All prior Memoranda of Understanding are hereby superseded or terminated in their entirety. Unless otherwise so provided, this Memorandum of Understanding shall be effective as July 1, 2009 and shall expire June 30, 2011.

Executed this 22nd day of June, 2009, by the Employer-Employee representatives whose signatures appear below for their respective organizations.

Employee Representatives
OPERATING ENGINEERS, LOCAL #3


CARL CAREY
Business Representative

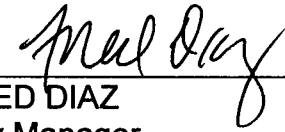

JEFF EDWARDS
Chief Steward


JAMES ANDERSON
Steward


JEFF HOLT
Steward


KEITH HARTER
Steward

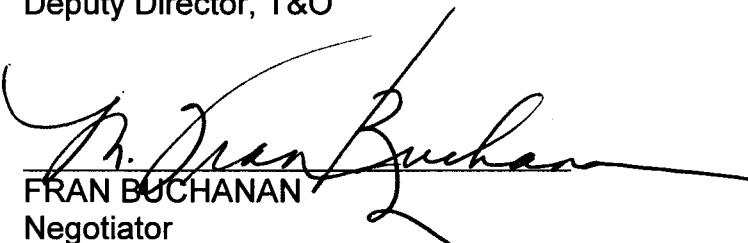
Employer Representatives
CITY OF FREMONT


FRED DIAZ
City Manager


JEFF KYLE
Acting Labor Relations Officer


KYLE KRAMER
Park Superintendent


FRANK MORGAN
Deputy Director, T&O


FRAN BUCHANAN
Negotiator

APPROVED AS TO FORM


JOAN A. BORGER
Assistant City Attorney

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EXHIBIT A

OE3 CLASSIFICATIONS

JOB CODE	JOB TITLE
6030	Auto Equipment Mechanic
6430	Building Maintenance Field Supervisor
6445	Building Maintenance Specialist
6460	Building Maintenance Worker I
6450	Building Maintenance Worker II
6440	Building Trades Worker III
5460	Chief Of Party
5445	Construction Inspector
5450	Construction Materials Inspector
6020	Fleet Mechanic II
6025	Heavy Equipment Mechanic
6040	Mechanic Assistant
6230	Park Equipment Mechanic
6220	Park Field Supervisor
6235	Park Irrigation Specialist
6260	Park Maintenance Worker I
6250	Park Maintenance Worker II
6580	Recreation Facility & Supply Specialist
6579	Recreation Facility & Supply Worker
5440	Senior Construction Inspector
6055	Street Field Supervisor
6065	Street Maintenance Worker I
6060	Street Maintenance Worker II
5430	Supervising Construction Coordinator
5465	Survey Instrument Operator

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**OE3 MOU
2009-2011**

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